

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

CLARENCE D. WILLIS §
§
§ Civil Action No. 5:22-CV-00045-RWS-JBB
v. §
§
DIRECTOR, TDCJ-CID §

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 10), which contains the Magistrate Judge's findings, conclusions and recommendations for the disposition of this matter. The Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court.

Petitioner Clarence D. Willis, an inmate confined at the Texas Department of Criminal Justice Correctional Institutions Division (TDCJ-CID), proceeding *pro se*, filed the above-captioned case to petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. The TDCJ-CID Director filed a response opposing the petition because it is a "mixed petition" containing unexhausted claims and exhausted claims. Docket No. 8. Petitioner then moved to voluntarily dismiss the petition without prejudice so that he may return to state court to exhaust available remedies before pursuing federal habeas relief. Docket No. 9.

The Magistrate Judge issued a Report recommending Petitioner's motion to dismiss be granted and the case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Docket No. 10. The Petitioner acknowledged receipt of the Report on July 28, 2022. Docket No. 11. To date, no objections to the Report have been filed by the parties. Therefore, the

parties are barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions and recommendations; and, except upon grounds of plain error, the parties are barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *see also Arriaga v. Laxminarayan*, No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021) (noting Plaintiff was not entitled to *de novo* review of the Magistrate Judge's findings where Plaintiff did not, among other things, file any objections thereto).

The Court has reviewed the pleadings and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"), *cert. denied*, 492 U.S. 918 (1989).

Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 10) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Petitioner's Petition for Writ of Habeas Corpus (Docket No. 1) is **DENIED**. It is further

ORDERED that the above-titled case is **DISMISSED WITHOUT PREJUDICE**. It is further

ORDERED that any motions currently pending in this case are hereby **DENIED-AS-MOOT**.

So ORDERED and SIGNED this 14th day of February, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE